Supreme Court, U.S.
FILED
MAY 24 1995
CLERK

(3)

No. 94-1519

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

DAVID LIPSCOMB UNIVERSITY,
Petitioner,

v.

HAROLD E. STEELE; AMERICANS FOR RELIGIOUS LIBERTY; REV. TOM BAKER, JR.; REV. DAVID MAYNARD; DON PETERSON; HARMON WRAY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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REPLY BRIEF OF PETITIONER

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Contrary to respondents' contentions, petitioner David Lipscomb University is not asking this Court to revisit a routine, fact-based summary judgment decision. This case turns on a pure issue of law: Whether municipal taxpayers can establish standing on the basis of evidence that would not pass muster under ordinary Article III standards.

This Court has repeatedly held that, to establish Article III standing, a plaintiff must plead and prove, *inter alia*, injury-in-fact. This injury must be:

- concrete and particularized—*i.e.*, "the injury must affect the plaintiff in a personal and individual way,"
- "actual or imminent, not conjectural or hypothetical."

Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 & n.1 (1992) (internal quotations omitted) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990); *Allen v. Wright*, 468 U.S. 737, 756 (1984); *Warth v. Seldin*, 422 U.S. 490, 508 (1975); *Sierra Club v. Morton*, 405 U.S. 727, 740-41, n.16 (1972)); see also *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 489 (1982).

Here, however, the court of appeals held that respondents, as municipal taxpayers, need not meet these criteria. Rather, respondents could survive summary judgment simply by adducing evidence that they *might* suffer an *indirect* harm *if* certain contingencies arise. Pet. App. 2a, 10a-11a, 14a. Respondents explain their standing theory as follows:

> [E]vidence in the record creates a genuine issue of material fact as to whether or not David Lipscomb University would have had to construct a new library and student center to maintain its academic accreditation, and as to whether or not the University had tax-exempt revenue bonds not been available, would have used either non-tax-exempt revenue bonds sold to its main group of supporters which resides in Middle Tennessee, which would have generated state income tax revenues on interest generated by those bonds, or commercial loans from local financial institutions . . . which would have generated bank excise tax revenues on interest paid by David Lipscomb University on those loans.

Respondents' Brief in Opposition at 9; see also *id.* at 6. Nothing could more plainly reveal the convoluted and speculative nature of the chain of causation that respondents rely upon to demonstrate their standing.

The purported injury asserted by respondents—possible loss of municipal tax revenues that might accrue *if* David Lipscomb undertook certain construction projects *and* financed those projects through taxable vehicles—simply does not and cannot meet the requirements of a concrete, particularized, and actual or imminent injury. *Lujan*, 112 S. Ct. at 2136. It can only survive the lax municipal taxpayer standing criteria applied by the Sixth Circuit. App. 2a. Thus, the conflict in legal standards is squarely presented on the facts of this case, making it a particularly good vehicle for review of the question presented in the petition.

CONCLUSION

For the foregoing reasons and those presented in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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